

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

GETTY IMAGES (US), INC.,)	
)	
Plaintiff,)	
)	
v.)	C.A. No. 23-135 (GBW)
)	
STABILITY AI, LTD. and)	
STABILITY AI, INC.,)	
)	
Defendants.)	

DECLARATION OF PETER O'DONOGHUE

PETER O'DONOGHUE, being duly sworn, deposes and says, in accordance with 28 U.S.C. § 1746:

1. I am the Chief Financial Officer and a member of the Board of Directors of Stability AI, Inc. ("Stability US"). I reside in London, England.

2. I make this Declaration based on my personal knowledge and if called to testify about the facts set forth below, I could do so competently.

3. I understand that Getty Images (US), Inc. ("Getty") alleges in this case that Stability US and Stability AI Ltd. ("Stability UK") are alter egos of each other. I understand that that means Getty asserts that Stability US and Stability UK do not operate as separate and distinct companies. That is not correct.

4. Stability US is a holding company organized under the laws of Delaware.

5. Stability UK is organized under the laws of the United Kingdom and is a wholly-owned subsidiary of Stability US.

6. Stability UK is an operating company focused on creating products using artificial intelligence.

7. Stability US and Stability UK are operated as separate companies. Each company maintains separate books and records, maintains separate bank accounts, and observes corporate formalities.

8. Stability UK is a party to employment contracts, supercomputer contracts, commercial agreements, sales contracts, and other agreements that are required for the day-to-day operations of the company. Stability US does not have any of the aforementioned agreements. Stability US and Stability UK are each adequately funded for their corporate purposes and are solvent as they are each able to pay their current obligations as they become due.

9. Stability US, after inadvertently failing to pay its franchise tax, quickly remedied its corporate charter within three working days after being alerted to the problem.

10. Stability US has a Board of Directors that meets regularly and records minutes of these meetings appropriately. Stability US's Board of Directors includes independent, non-management directors, including its Board Chairman and certain investor designees.

11. Stability US does not maintain any offices in Delaware or anywhere else in the United States. Stability US has no employees in Delaware or anywhere else.

12. Stability US's and Stability UK's principal places of business are located in London, England.

13. Stability US is the corporate entity through which the Stability AI corporate group raises capital from outside investors. Stability US has recently acquired a company, Init ML Inc. and its wholly owned subsidiary, Init ML SaS, which now operates as a separate, wholly-owned subsidiary of Stability US.

14. Stability UK does not maintain any offices or employees in Delaware.

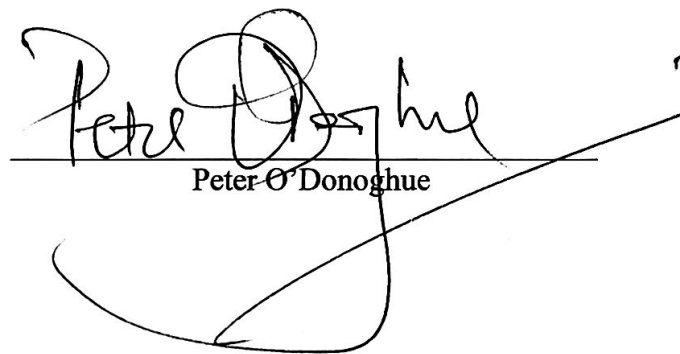
15. The people who work for Stability UK in the United States have employment contracts with a third-party remote working company, which has a separate agreement with Stability UK for their services. At the time of filing the Amended Complaint, Stability UK employed approximately 56 people in the United States through this agreement, with more than 20% of the US workforce residing in California, and no employees residing in Delaware. Some of these employees reside in the Northern District of California. Senior executives of Stability UK, including two direct reports of the CEO, reside in California. Stability UK has spent over \$500,000 with California suppliers.

16. None of the development of Stable Diffusion or DreamStudio took place in Delaware or involved computing resources located in Delaware. Stable Diffusion and DreamStudio were developed in part by individuals working for Stability UK while residing in California, Oregon, and Washington. For example, one former employee who resides in the Northern District of California participated in the development of DreamStudio.

17. Stability US and Stability UK have both been named in a class action pending in the United States District Court for the Northern District of California styled *Anderson v. Stability AI, Ltd., et al.*, No. 3:23-cv-00201 (N.D. Cal. filed Jan 13, 2023) (the “Class Action”), that arises from substantially the same facts and circumstances as alleged in Getty’s Amended Complaint. A true and correct copy of the Complaint in the Class Action is attached hereto as Exhibit A. Stability US and Stability UK have consented to the jurisdiction of the Northern District of California in the Class Action.

[Signature page to follow]

I declare under penalty of perjury under the laws of the United States of America that the foregoing
is true and correct. Executed on May 2, 2023.



Peter O'Donoghue

CERTIFICATE OF SERVICE

I hereby certify that on May 2, 2023, I caused the foregoing to be electronically filed with the Clerk of the Court using CM/ECF, which will send notification of such filing to all registered participants.

I further certify that I caused copies of the foregoing document to be served on May 2, 2023, upon the following in the manner indicated:

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/s/ Michael J. Flynn

Michael J. Flynn (#5333)